the act will not be affected. *Alexander* v. *State*, 12 Texas, 540 (Tex., Sup. Ct.). The argument that consent to the entry can be implied from the facilities afforded would seem to be clearly rebutted by a consideration of the object for which they were furnished. This is the view of the modern German authorities. Olhausen, Commentary on the German Penal Code, 880. There is no doubt about the correctness of the decision in the principal case. It can scarcely be contended that the town marshal was the agent of the owner, and at any rate the plan was conceived before there was any communication between them. A position which might have been taken by defendant is that the public should not punish, as an offence against itself, an act which was instigated by its own official. *Saunders* v. *People*, 38 Mich. 218. The short answer to this would seem to be that the official in thus acting cannot be considered the agent of the public, and therefore cannot bind it.

RIGHTS OF A POLICY HOLDER IN THE SURPLUS OF A LIFE INSURANCE COMPANY. — The decision of the New York Court of Appeals in the case of *Greff* v. *Equitable Life Assurance Society*, 54 N. E. Rep. 712, is a notable one, not because it is a novelty in the law, but by reason of the great interests involved. The defendant was a life insurance company with a capital stock of $100,000 and a surplus at the time the action was brought of over $43,000,000. Its charter provided that a general balance be struck at certain periods, and after deducting a sufficient amount to cover all outstanding risks and other obligations, that an equitable share of the surplus be credited to each policy holder. The plaintiff held a policy which provided that the holder should be entitled to participate in the distribution of the surplus of the company according to such methods as might be adopted by it for distribution; these methods were accepted and ratified by the holder. On the expiration of this policy the plaintiff sought to take with him a proportionate share of the accumulated surplus. The court held that by the terms of the policy the plaintiff was entitled to an equitable share of the distributable surplus only, had no claim upon that reserve fund which was designated by the name of surplus, and that the determination of what portion of the surplus should be distributed among the policy holders rested with the discretion of the directors, whose methods the plaintiff by his contract had ratified and accepted. As to the charter, while not admitting that it could govern the contract, the court said that it clearly gave the company authority to increase its reserve fund for the security of its policy holders and to meet contingent liabilities; and merely because such reserve fund was designated surplus, the plaintiff had no right to a share of it, but only to a share in an amount set apart by the directors.

This decision is clearly correct. Aside from the fact that the word "surplus" is commonly used in two different senses, reserve fund and distributable earnings, of which the latter meaning was the one employed both in the charter and the contract, there is the broader ground that a contract is to be interpreted in the light of the circumstances out of which it grew and which surrounded its adoption. *Reed* v. *Insurance Co.*, 95 U. S. 23. Clearly it is not only just, but essential from a business point of view, that an insurance company keep on hand a reserve fund to secure that stability which is necessary to its own existence and the proper indemnity of its policy holders. And any contract of insurance

entered into between the plaintiff and defendant must have been made with the understanding that the defendant was to keep such a reserve fund and to add to it as its business extended.

ADMISSIBILITY OF EVIDENCE ILLEGALLY OBTAINED. — Since the law of evidence is a product of the development of trial by jury, the test of admissibility always has been: is it safe to entrust the fact to a jury; not, is it fair to the other party. It has been held, therefore, that evidence was admissible though obtained by the plaintiff unlawfully. *Legatt* v. *Tollervey*, 14 East 302. And so evidence found on an unwarrantable search by a private detective has been admitted. *Grindrat* v. *People*, 138 Ill. 103. Even where the illegal seizure was by a public officer, most jurisdictions have held, that evidence procured thereby is competent. *Com.* v. *Henderson*, 140 Mass. 303; *Starchman* v. *State*, 36 S. W. Rep. 940 (Ark.). However, in the recent case of *U. S.* v. *Wong Quong Wong*, 94 Fed. Rep. 832 (Dist. Ct., Vt.), where private letters of the defendant which had been opened wrongfully by customs officials furnished the evidence on which an order had been issued for his deportation, the order was reversed by the United States District Court. The ground taken by the court was that the evidence was inadmissible since obtained in violation of the Fourth and Fifth Amendments to the Constitution of the United States. This decision deals a sharp blow to a common practice of prosecuting officers hitherto justified on technical grounds of evidence.

From the standpoint of constitutional law it has been urged in the State courts that these amendments were meant simply to restrict the legislature in authorizing and the executive in issuing certain governmental orders; that the duty of the courts was only to punish illegal seizures by executive subordinates and denounce statutes providing for such acts. *Williams* v. *State*, S. W. Rep. 624 (Ga.). In opposition to this, in *Boyd* v. *U. S.*, 116 U. S. 616, the Supreme Court of the United States held it was error to admit evidence produced by order of court under such a statute. This case has since been distinguished in the State courts from facts such as those in the principal case, in that here the violation of the defendant's right was by order of court. The principal case, however, put *Boyd* v. *U. S.*, *supra*, on the broader ground that, admitting the act of a government official violated the protection given by the Constitution, evidence obtained thereby is inadmissible.

There is an intimate relation between the Fourth and Fifth Amendments in these cases. Unwarrantable seizure of papers of an accused by State officials to be used in evidence against him is in effect compelling him to testify against himself. To say that the prohibition of the former is addressed to the executive, of the latter to the judiciary, is to separate what seem naturally connected. To admit as evidence facts found as a result of the violation of these rights accomplishes the sole purpose of the violation and renders the protection practically worthless. One department of the government would be aiding another in violating the fundamental law they both administer. Indeed such admission of evidence would seem to be itself a substantial violation of these amendments. In this view of the case the technicalities of the law of evidence must yield to the broader scope of constitutional interpretation.